EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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In Re:
Bair Hugger Forced Air Warming
Products Liability Litigation

This Document Relates To:
All Actions MDL No. 15-2666 (JNE/FLM)

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DEPOSITION OF ALBERT P. VAN DUREN
VOLUME I, PAGES 1 - 326
MARCH 7, 2017

(The following is the deposition of ALBERT P. VAN DUREN, taken pursuant to Notice of Taking Deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, via videotape, at the offices of Ciresi Conlin L.L.P., 225 South 6th Street, Suite 4600, Minneapolis, Minnesota, commencing at approximately 9:00 o'clock a.m., March 7, 2017.)

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I N D E X

P R O C E E D I N G S

(Witness sworn.)

ALBERT P. VAN DUREN

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. BANKSTON:

Q. Good morning, Mr. Van Duren.

A. Good morning.

Q. We're going to skip some of the formalities because I know you've been in that chair before, done some depositions, so we won't go over all of that today; I'm sure you're up to speed. But before we dive in, I did want to talk to you, make sure that you understood exactly what kind of deposition it is we're taking today, and -- and by that I mean that today you are appearing as a corporate representative for 3M. Do you feel like you have an understanding of what that is and what your purpose is here today?

A. I believe so.

Q. Okay. I'm going to be asking you questions, and in response to these questions today you're going to be giving testimony as though you're the voice of 3M. Obviously, I can't put 3M in that chair, so somebody has to be chosen. I've been informed that

difference between the 500 and the OR, is the changes you talked about making it suitable for operating room use?

A. That was -- that was one among many changes that were made in that series of warming units to distinguish them from warming units that were specifically designed for use in the PACU or the ICU.

Q. Okay. What is the purpose of having a filter on the Bair Hugger?

A. Well it had several purposes: one purpose is to prevent the fouling of the internal components of the Bair Hugger; the other is to reduce the particulates that enter and exit the Bair Hugger.

Q. As -- in the field of --

When designing the Bair Hugger, why did the company care about particulates coming in and out of the Bair Hugger?

A. To keep the electronics and the sensors, the fans and the heat exchangers from gathering debris and fouling.

Q. Okay. When -- when -- I'm --

What I'm specifically referring to is that when I asked you for the purpose, you gave me two purposes, one being to foul -- not to foul up the motor and the other to reduce particulates in and out

of the Bair Hugger. Are those two sides of the same coin or are those two different things?

A. They're -- they're two different things.

Q. Okay. So in other words, I understand that one of the purposes was to prevent the fouling of the motor, things going into the Bair Hugger.

A. Well it's -- it's not just the motor. I mean the -- all of the sensing and heat-exchanger components of the entire warming unit work better when they're not fouled.

Q. Okay. So kind of a shorthand for that is the safety and welfare of the internal components, the actual machinery that's being considered with the filter, that's what its -- one of its purposes to be there.

A. Well I wouldn't say the safety. We -- we want the unit to operate within certain limits of specifications, and in order to ensure that those operating limits are met, the unit -- the components in the unit have to remain unfouled.

Q. Okay. All right. So we have that purpose for the filter. And I understand that the filter plays a role in keeping the device operational. You will agree with that?

A. Yes.

Q. Okay. But in terms of particulates coming in and out of the Bair Hugger, was the company's only concern the -- the continued operation of the unit?

A. No. There -- there was also concern of keeping particulates out of the exhaust flow from the warming unit --

Q. Okay.

A. -- into the blanket.

Q. Why -- okay. Why did the company care about keeping particulates out of the exhaust flow of the warming unit?

A. Well it just made -- it made sense not to put particulates into the -- into the blanket.

Q. I don't want to be like my six-year-old is on these sorts of questions, but why don't you want to put particulates into the blanket?

A. Well there was no reason to blow particulates into the -- into the blanket, which might end up leaving the blanket.

Q. Okay. Why does the company care if particulates leave the blanket?

A. Well there's always the -- there's -- there's always the potential for increasing the level of pollution in the operating room, so this is one method of reducing that possibility.

Q. Okay. When we talk about pollution in the operating room, what does that mean to you?

A. Well, the particulate load in -- within the operating room.

Q. Okay. When making filter decisions, making these design decisions and understanding that there is an issue that -- as you call it, pollution in the operating room, again I hate to go down this -- keep doing this, but why is pollution, things coming out of the Bair Hugger in the OR, why was that a concern for the company?

A. Well again, we -- there was --

There's no reason to increase the particulate load that's being blown into the blanket which is on a patient.

Q. Okay. So I understand there's no reason to put particulates onto a patient. Is there any reason not to?

MR. BLACKWELL: Yeah. I object to the form of the question. If you understand it, you can answer it.

A. I'm not -- I'm not sure I --

Q. Let me try to rephrase that right.

A. Okay.

Q. Because from what I understand from your

asked him about changes that were made to the predicate device, which was the 200, which is what this is a picture of.

MR. BLACKWELL: So Exhibit 351 relates to the predicate device, the 200.

MS. ZIMMERMAN: Exactly. And the question ultimately is: Why was the warning removed when we got to the 500 series?

A. Well there's another difference, too, and that is that the 200 was not intended to be used in the operating room.

Q. Right. And -- and I'm aware of that, Mr. Van Duren. My question really is -- has to do with the knowledge that was available to the company broadly at that time.

There -- there was some knowledge, based on the fact that there is a warning of airborne contamination, that contamination could be airborne; correct?

A. Yes.

Q. Okay. And -- and despite that fact, there is no warning on the 500 series of the Bair Hugger device about risk of airborne contamination; correct?

A. That's correct.

Q. And that's despite the fact that the medical

care professionals rely on the company to warn about risks; correct?

MR. BLACKWELL: I object to the form of the question.

A. The risks that are known of, known about, yes.

Q. All right. And -- and -- and al --

That's also despite the fact that medical care professionals rely on the company to provide rules for safe use of a device; correct?

MR. BLACKWELL: I object to the form of the question.

A. Yes.

And it's very likely that the hazard analysis that occurred subsequent to the development of this device recognized that the risk index was either too low or zero and removed that warning from the labeling.

MS. ZIMMERMAN: I'm going to move to strike as non-responsive.

Q. Are you aware of any testing that -- that showed that there was not airborne risk of contamination --

A. I'm not.

Q. -- conducted by this study?

A. I'm not.

Q. Or I'm sorry, conducted by the company.

A. No, I am not.

Q. Okay. So it's pure speculation on your part.

Turning to the 700 series Bair Hugger, was -- was there any changes on the warnings as between the 700 series and the 500 series Bair Huggers?

A. I believe there were some changes.

Q. And what were those changes?

A. I believe the recommendation not to hose patients with the -- with the end of the nozzle was added.

Q. And hose --

And hosing is a practice of essentially using the machine without the disposable blanket attached; correct?

A. That's right.

Q. All right. Were there any other changes?

A. I'm -- I'm --

I suspect there are. I don't -- I don't know which ones changed between the two models though.

Q. So as you sit here today, the only change that you are aware of between the 500 and 700 series

with respect to the warnings has to do with the warning not to engage in hosing; correct?

A. That's correct.

Q. All right. And you'd agree that there's no warning on the 700 series, again, regarding the risk of airborne contamination; correct?

A. That's correct.

Q. And again, that's despite the fact that the risk of airborne contamination was in fact known to the company at that time; correct?

MR. BLACKWELL: I object to the form of the question.

A. It --

Well, it was included as a warning on the model 200, yes.

Q. Okay. I'm going to turn to topic number eight, which is data or research supporting the claim that the Bair Hugger blankets act as an additional filter or otherwise reduce the potential for contamination in the operating room. You're prepared to testify about that today as well; correct?

A. Yes.

Q. And I think you had some questions posed to you earlier today by my colleague, Mr. Assaad, regarding the Avidan study. Do you recall that?

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A. Yes.

Q. Is there any other study that -- that 3M is aware of that addresses the issue of whether a blanket might act as an additional filter?

A. I think Avidan is probably the first indication we had of -- of that. I'm not aware as I sit here of another study like that.

Q. All right. And that was 1993?

A. I think it was around that timeframe, yes.

Q. All right. Are you aware or is the company aware of any other data that supports the notion that the blanket itself may act as an additional filter?

A. To my knowledge, we haven't conducted any internal testing to confirm that.

Q. So no -- no testing has been done by the company with respect to whether the disposable blankets themselves may act as some sort of filter; correct?

A. That's correct.

Q. All right. And Mr. Assaad asked you some questions about that Avidan study. You're aware that ultimately the author concluded that forced-air warming systems, such as the Bair Hugger, are a potential source of nosocomial infections; correct?

MR. BLACKWELL: I object to the form of the question.

A. He -- he speculated that was true.

Q. And again, that -- that Avidan study was -- was done on the Bair Hugger 505; correct?

MR. BLACKWELL: Object as asked and answered.

A. Yes.

Q. [redacted]

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[redacted]

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[redacted]